

**JUL 28 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO SANCHEZ-GOMORA,  
a/k/a Pedro Garcia, Pedro Iturbe Garcia,  
Francisco Gomora, Pedro Perez, Fernando  
Sanhex,

Defendant - Appellant.

No. 05-50140

D.C. No. CR-04-01211-SJO

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
S. James Otero, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Francisco Sanchez-Gomora appeals from the 57-month sentence imposed  
after his guilty-plea conviction for one count of illegal entry, in violation of 8

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291.

The district court did not err in applying an enhancement pursuant to 8 U.S.C. § 1326(b)(2) based on Sanchez-Gomora's prior aggravated felony conviction. The fact of a prior conviction does not need to be admitted by the defendant or proven to a jury beyond a reasonable doubt for purposes of sentencing. *See United States v. Booker*, 543 U.S. 220, 244 (2005); *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (noting the continuing vitality of *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998)).

Sanchez-Gomora's second contention, that the requirement he report to a probation officer within 72 hours of reentering the country was imposed in violation of his Fifth Amendment right against self-incrimination, is also foreclosed. *See United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772 (9th Cir. 2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the reference to 8 U.S.C. § 1326(b)(2).

**AFFIRMED; REMANDED.**